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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Michael Jeffrey Pratt,

10 Plaintiff,

11 v.

12 Bradley Carroll, et al.,

13 Defendants.

No. CV-13-01605-PHX-GMS (MEA)

ORDER

14 Pending before the Court is Plaintiff Michael Jeffrey Pratt's Motion to Amend
15 Pleading. (Doc. 51.) On November 5, 2014, Magistrate Judge Mark E. Aspey issued a
16 Report and Recommendation ("R & R") recommending that the Motion be denied. (Doc.
17 60.) Plaintiff filed objections to the R & R. (Doc. 63.) For the following reasons, the
18 Court adopts the R & R of Magistrate Aspey and denies the Motion.

19 **BACKGROUND**

20 The facts of this case are outlined in this Court's previous orders. Relevant to the
21 current Motion, Plaintiff has filed a proposed Second Amended Complaint ("SAC"),
22 alleging that, following his arrest, medical staff at the Chandler Regional Hospital,
23 including Dr. Keith Butler and nurses Sandra Sovereign, Wilma Egan, and John
24 Plummer, inserted two separate catheters in Plaintiff to run a urinalysis while he was
25 restrained by Officer John Lucas, Officer Brian Morgenthaler, and one unknown
26 Chandler police officer. (Doc. 52.) In the proposed SAC, Plaintiff seeks to join the
27 medical staff as Defendants to his suit and claims that they violated his constitutional
28 rights and performed an illegal search by inserting the catheters after he refused medical

1 treatment. (*Id.*)

2 DISCUSSION

3 Federal Rule of Civil Procedure 15(a)(2) states that a court should “freely give
4 leave” to amend pleadings “when justice so requires.” The Ninth Circuit has further held
5 that requests for leave are generally granted with “extreme liberality.” *Rosenberg Bros. &*
6 *Co. v. Arnold*, 283 F.2d 406, 406 (9th Cir. 1960) (per curiam). In addition, “[t]he
7 Supreme Court has instructed the federal courts to liberally construe the ‘inartful
8 pleading’ of pro se litigants.” *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987)
9 (quoting *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam)). However, “a
10 party is not entitled to an opportunity to amend his complaint if any potential amendment
11 would be futile.” *Mirmehdi v. United States*, 689 F.3d 975, 985 (9th Cir. 2012). A
12 proposed amended complaint is futile if it fails to state a claim for which relief may be
13 granted. *See Kest v. Kest*, 132 F.3d 39 (9th Cir. 1997); 42 U.S.C. § 1997e (also requiring
14 dismissal a prisoner’s complaint that “fails to state a claim upon which relief can be
15 granted”).

16 To sufficiently plead section 1983 claims, “a plaintiff must both (1) allege the
17 deprivation of a right secured by the federal Constitution or statutory law, and (2) allege
18 that the deprivation was committed by a person acting under color of state law.”
19 *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006) (citing *West v. Atkins*, 487 U.S.
20 42, 48 (1988)). In cases where plaintiffs bring section 1983 claims based on the Fourth
21 Amendment against private actors, they must also allege that the private actor was an
22 “‘instrument or agent’ of the state in effecting a search or seizure.” *United States v.*
23 *Walther*, 652 F.2d 788, 791 (9th Cir. 1981) (quoting *Coolidge v. New Hampshire*, 403
24 U.S. 443, 487 (1971)). To allege that medical personnel are instruments or agents of the
25 state when they perform medical procedures, plaintiffs must allege that they acted for
26 some purpose other than “medical purposes.” *United States v. Chukwubike*, 956 F.2d 209,
27 212 (9th Cir. 1992) (holding that doctors removing balloons from the plaintiff’s stomach
28 and intestines without consent of the patient was not a search or seizure).

1 In the proposed SAC, Plaintiff makes no mention of who ordered the urinalysis to
 2 be conducted or the catheters to be placed. (*See* Doc. 52.) In the current Motion, Plaintiff
 3 concedes that “to the best of [his] knowledge,” the catheters were placed at the doctor’s
 4 orders and that “it was done by [the] doctor’s O.K.” (Doc. 51.) But in his objections to
 5 this Motion, Plaintiff questions the motives of the doctors, who placed the catheters after
 6 Plaintiff’s heart rate had returned to a moderate level, and suggests that the police officers
 7 had “something to do with” the catheterization. (Doc. 63.) These potentially conflicting
 8 accounts of the officers’ role in ordering the catheterization do not sufficiently plead that
 9 any of the medical staff at Chandler Regional Hospital acted for any purpose other than
 10 “medical purposes.” *Chukwubike*, 956 F.2d at 212. Thus, Plaintiff has failed to
 11 sufficiently allege that the doctors acted as instruments or agents of the state and that they
 12 acted under color of state law. *See Walther*, 652 F.2d at 791.¹ Plaintiff’s proposed SAC
 13 fails, under section 1983, to state a claim for which relief may be granted.

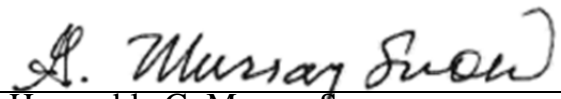
14 **IT IS THEREFORE ORDERED:**

15 1. Magistrate Judge Aspey’s R & R (Doc. 60) is **ACCEPTED**.

16 2. Plaintiff Michael Jeffrey Pratt’s Motion to Amend Pleading (Doc. 51) is
 17 **DENIED**.

18 3. The docket shall reflect that the Court certifies, pursuant to 28 U.S.C.
 19 § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), that any appeal of
 20 this decision would not be taken in good faith.

21 Dated this 27th day of January, 2015.

22 
 23 _____
 24 Honorable G. Murray Snow
 25 United States District Judge

26 _____
 27 ¹ In addition, in their depositions, the medical staff stated that they inserted the
 28 catheters because Plaintiff refused to provide a urine sample and they performed the
 urinalysis because Plaintiff’s heart rate was abnormally high and Plaintiff was
 experiencing an altered level of consciousness. (Doc. 66, Ex. C.)